ION FILED
JUN 13 1980

NO. 79-1857

IN THE

# Supreme Court of the United States

October Term, 1979

ALCOA STEAMSHIP COMPANY, INC.
(a New York Corporation),

*Petitioner,*

v.

M/V NORDIC REGENT, her boilers, tackle, machinery and other appurtenances *in rem,* and NORCROSS SHIPPING CO., INC. (a Liberian Corporation), as her owner *in personam,*

*Respondent.*

## MOTION FOR LEAVE TO PROCEED AMICUS CURIAE BY THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE AND BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

JOHN F. DONELAN
RENEE D. RYSDAHL
914 Washington Building
Washington, D.C. 20005

*Attorneys for The National Industrial Traffic League*

June 1980

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

IN THE

# Supreme Court of the United States

**October Term, 1979**

---

**NO. 79-1857**

---

ALCOA STEAMSHIP COMPANY, INC.
(a New York Corporation),

*Petitioner,*

v.

M/V NORDIC REGENT, her boilers, tackle, machinery and other appurtenances *in rem,* and NORCROSS SHIPPING CO., INC. (a Liberian Corporation), as her owner *in personam,*

*Respondent.*

---

## MOTION OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

---

The National Industrial Traffic League (the League) hereby requests permission to file a brief *amicus curiae* in support of petitioner in the above matter.

The National Industrial Traffic League is a nationwide association of approximately 1800 corporations, shipper associations, boards of trade and chambers of commerce, etc. Among the League's members are many of the nation's largest industrial and manufacturing firms. Many League members have extensive operations throughout the

world. As participants in this country's vital international trade these companies frequently do business with persons who are neither resident in nor citizens of the United States but who may be subject to the jurisdiction of a United States Court. Therefore, the members of the League will be adversely affected if the decision of the United States Court of Appeals is allowed to stand.

Because of the significance of this case to the entire business community, the League submits that its participation, as a representative of a broad cross-section of American business, will be of assistance to this Court in passing upon the Petition for Writ of Certiorari.

The Respondent's consent to the filing of a brief *amicus curiae* by The National Industrial Traffic League was requested by letter dated June 5, 1980, and denied by letter dated June 9, 1980.

For the foregoing reasons, it is respectfully requested that the attached Brief be accepted for filing by this Court.

JOHN F. DONELAN
RENEE D. RYSDAHL
914 Washington Building
Washington, D.C. 20005

IN THE

# Supreme Court of the United States

October Term, 1979

NO. 79-1857

ALCOA STEAMSHIP COMPANY, INC.
(a New York Corporation),

*Petitioner,*

v.

M/V NORDIC REGENT, her boilers, tackle, machinery and other appurtenances *in rem,* and NORCROSS SHIPPING CO., INC. (a Liberian Corporation), as her owner *in personam,*

*Respondent.*

## BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The National Industrial Traffic League,[1] a national trade association comprising many of the nation's major

[1]The National Industrial Traffic League is a nationwide association of approximately 1800 corporations and associations. Among the League's members are numerous corporations engaged in various aspects of international trade. These companies do extensive business outside the United States and with persons who are neither resident in nor citizens of the United States. For this reason the ability to seek legal redress in the judicial system of this country is of great importance to the League and its members.

corporations, hereby files its Brief in support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit filed by Alcoa Steamship Company (Alcoa) on or about May 22, 1980.

The League adopts, for the purposes of this Brief, the material in Alcoa's Petition under the headings "Opinions Below," "Jurisdiction," "Statutes Involved" and "Statement of the Case."

## QUESTIONS PRESENTED

1. Whether the courts of this country may dismiss a case brought by a United States resident citizen on the grounds of *forum non conveniens* in the absence of a showing of manifest injustice to the defendant and without due deference to the United States citizenship of the plaintiff?

2. Whether the courts in considering a motion for dismissal on grounds of *forum non conveniens* must give due consideration to the adequacy of the remedy in the foreign court to which the action would be relegated?

## ARGUMENT

Although this case began as a relatively straightforward admiralty suit, subsequent developments have caused it to become a matter with significant repercussions for this country's citizens, particularly for American businessmen doing business abroad. These repercussions result from the United States Court of Appeals' substantial departures from the established doctrine of *forum non conveniens*. In one stroke of the pen the Court of Appeals has eliminated two of the most significant elements of that doctrine.

If the Second Circuit's opinion is allowed to stand, the preferential treatment afforded to American citizens seek-

ing to redress their grievances in American courts will be lost. American resident citizens will be treated in precisely the same manner as non-resident foreign plaintiffs coming before American courts. The situation is exacerbated by the fact that American citizens will be relegated to foreign courts without any consideration of the adequacy of the remedy available in those courts. In short, if the Second Circuit's decision is allowed to stand, matters of administrative convenience will prevail over the right of Americans to have access to their judicial system and over considerations of the justice of the end result.

The significance of these departures from the long-established doctrine of *forum non conveniens* for American citizens – both corporate and private – requires that this Court review the Second Circuit's opinion and enunciate the standards governing application of the doctrine of *forum non conveniens* under circumstances such as those presented here.

## The United States Residency and Citizenship of the Plaintiff Should Be Given Great Weight in Applying the Doctrine of *Forum Non Conveniens*

In the past courts applying the doctrine of *forum non conveniens* have given considerable weight to the fact that the plaintiff was an American citizen. The reason for this deference to American citizens was articulated in *Burt v. Isthmus Development Company,* 218 F.2d 353, 356 (5th Cir. 1955), *cert. denied,* 349 U.S. 922 (1955), as follows:

> This nation has historically been most solicitous of its citizens' welfare and its courts exist as much for the adjudication of its citizens' controversies as for the enforcement of its laws.

Over the years courts applying the doctrine of *forum non conveniens* have consistently recognized the overriding importance of providing a forum for American citizens, absent extreme circumstances compelling a different result. In *Burt v. Isthmus Development Company, supra,* the United States Court of Appeals for the Fifth Circuit held that a court should exercise its discretion to deny a citizen access to the courts only upon a showing of "unusually extreme circumstances" and "should be thoroughly convinced that material injustice is manifest." This formulation of the doctrine has been expressly accepted by the United States Court of Appeals for the District of Columbia Circuit. *Founding Church of Scientology v. Verlag,* 536 F.2d 429, 435 (D.C. Cir. 1976).

The importance of citizenship in the weighing of factors required for application of the doctrine of *forum non conveniens* has also been recognized by the United States Court of Appeals for the Third Circuit. In *Mobil Tankers Company v. Mene Grande Oil Company,* 363 F.2d 611, 614 (3rd Cir. 1966), *cert. denied,* 385 U.S. 945 (1966), the Court noted that, while an American citizen does not have an absolute right to access to this country's courts, access should not be denied "in the absence of persuasive evidence that the retention of jurisdiction will result in manifest injustice to the respondent." The court further noted that this principle was applicable "even though the more convenient forum may be the foreign one."

Even the Second Circuit has in the past recognized the overriding significance of an American citizen's choice to bring a cause of action in this country's court system. *Leasco Data Processing Equipment Corp. v. Maxwell,* 468 F.2d 1326, 1344 (2d Cir. 1972).

Now the Second Circuit, relying on a perceived trend toward a lesser degree of deference to the plaintiff's choice

of forum and citizenship, has turned its back on the standards previously applied. The Second Circuit purports to follow the trend "away from according a talismanic significance to the citizenship or residence of the parties." (Appendix B of Petition for Writ of Certiorari, p. A-18) In fact, the Second Circuit's opinion has pushed the pendulum to the opposite extreme by according no special consideration to the citizenship and residence of the plaintiff. The fact that an American citizen will be deprived of a forum in his own country and will be relegated to a forum in which an adequate remedy is clearly not available was given little, if any, weight in the Second Circuit's opinion.

The implications of the Second Circuit's opinion for American citizens are truly far-reaching and ominous. The significance of the Second Circuit's decision extends well beyond the parties involved in this litigation. All American citizens engaged in any type of international commerce may be adversely affected if the Second Circuit's application of the doctrine of *forum non conveniens* is allowed to stand. The ramifications of this case are of such a magnitude as to require review by this Court.

## The Ability of an American Citizen to Obtain a Just and Adequate Remedy in a Foreign Court Must Be Given Great Weight in Applying the Doctrine of *Forum Non Conveniens*

In affirming the dismissal of Alcoa's suit, the Second Circuit gave only superficial consideration to the fact that an adequate remedy is not available to Alcoa in the only other forum in which the suit can be brought. (Appendix B to Petition for Writ of Certiorari, p. A-29) If Alcoa is prohibited from bringing its suit in this country, it will be able to recover only $570,000 of the estimated $8 million in damages incurred as a result of the negligence of the Nor-

dic Regent's crew. Such minimal relief constitutes virtually no relief at all.

As this Court noted in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 506-507 (1947), the doctrine of *forum non conveniens* presupposes the existence of at least two forums where the action may be brought. Implicit in this assumption is the requirement that each of the alternative forums affords the parties an opportunity to obtain adequate relief.

In applying the doctrine of *forum non conveniens,* the courts have recognized the need for a balancing process that weighs not only the convenience of the parties but also the question whether the ends of justice will be best served by requiring that the action be brought in another forum. In fact, this has been recognized to be the more important consideration. *Mobil Tankers Company v. Mene Grande Oil Company, supra* at 614. Clearly, justice requires that the plaintiff have an adequate remedy available to it. The ends of justice are not well served if the defendant is able to escape responsibility for its actions by transferring the case to another forum.

The fact that the alternative forum may have less advantageous laws may not be the controlling consideration in applying the doctrine of *forum non conveniens,* but it is a factor that must be weighed. *Fitzgerald v. Texaco, Inc.,* 521 F.2d 448, 453 (2d Cir. 1975). Up until now the courts have generally placed considerable emphasis on the adequacy of the remedy, apparently in recognition of the fact that a wholly inadequate remedy may, in effect, constitute no remedy at all. For example, in *Mobil Tankers Company v. Mene Grande Oil Company, supra,* the inconvenience to the defendants was found to be outweighed by what the court deemed to be inadequate procedures in the courts in the alternative forum. Those procedural in-

adequacies related to such matters as pretrial discovery and did not directly affect the plaintiff's recovery. Such deficiencies are vastly different from, and much less significant than, the absolute bar to all but the most most minimal recovery facing Alcoa if it is forced to bring its suit in Trinidad.

The Second Circuit's failure to give due consideration to the adequacy of the remedy available establishes a truly undesirable precedent. American citizens will find themselves without a remedy simply as a matter of convenience. This is hardly a just result and certainly not the type of treatment that Americans are entitled to at the hands of their own judicial system.

## CONCLUSION

The extreme importance of this case lies in the tremendous impact that it will have on all American businessmen transacting business in other countries and with persons who are neither resident in nor citizens of the United States but who may be subject to the jurisdiction of a United States court. Alcoa Steamship Company is only one of many potential plaintiffs that will find themselves denied access to their own judicial system and faced with the possibility of a less than adequate remedy for their grievances. This would be a very unfortunate development in a nation that has long recognized the importance of insuring access to its courts. In light of the importance of this case, it is respectfully requested that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

JOHN F. DONELAN
RENEE D. RYSDAHL
914 Washington Building
Washington, D.C. 20005

*Attorneys for The National Industrial Traffic League*

June 1980